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DEC 08 2005

OFFICE OF PETITIONS

In re Application of : ON PETITION
Little et al. :
Application No. 09/975,427 :
Filed: October 10, 2001 :
Atty Docket No. S145-USA :

This is a decision in response to the petition under 37 CFR 1.137(b), filed July 21, 2005, to revive the above-identified application.

The petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to file a complete and proper appeal brief after filing a Notice of Appeal. Applicant filed a Notice of Appeal on January 6, 2004. Thereafter, Applicant was given two (2) months within which to file an appeal brief. Extensions of time under 37 CFR 1.136 were available. Applicant filed an appeal brief on March 18, 2004; however, the appeal brief failed to comply with the requirements of 37 CFR 1.192(c). Applicant was so notified in a Notice of Non-Compliant Amendment ("Notice"), mailed June 14, 2004. The Notice informed Applicant that a reply must to the Notice must have been filed within the longest of three (3) periods: 1) one month or 30 days from the mailing of the Notice; 2) two months from the mailing of the Notice of Appeal, or 3) within the period for reply to the [final rejection]. Applicant failed to timely and/or properly reply to the Notice. Since no claims were allowed, the appeal was dismissed, and the proceedings as to the rejected claims were terminated, the

application became abandoned on March 6, 2004¹. See, 37 CFR 1.192 and MPEP 1206².

Applicant files the instant petition and an appeal brief.

Applicable Law

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed); (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). Applicant lacks item (1).

As to item (1), Applicant has failed to file a proper reply. A proper reply to a final Office action includes 1) a Notice of Appeal and fee; 2) a continuing application; 3) an amendment or request for reconsideration which places the application in condition for allowance brief.

As such, the appeal brief is not a proper reply to the final Office action.

Applicant is further advised that any brief filed on or after September 13, 2004 must comply with the requirements set forth in 37 CFR 41.37 and accompanied by the fee under 37 CFR 41.20(b)(2), unless the brief has a certificate of mailing date before September 13, 2004. Accord MPEP 1205.02 Rev. 3, August 2005.

Further correspondence with respect to this matter should be addressed as follows:

¹ If there are no allowed claims, the application is abandoned as of the date the brief was due. If the time for filing a brief has passed and the application has consequently become abandoned, the applicant may petition to revive the application, as in other cases of abandonment, and to reinstate the appeal; if the appeal is dismissed, but the application is not abandoned, the petition would be to reinstate the claims and the appeal, but a showing equivalent to that in a petition to revive under 37 CFR 1.137 is required. In either event, a proper brief must be filed before the petition will be considered on its merits. (Emphasis supplied).

² Although failure to file the brief within the permissible time will result in dismissal of the appeal, if any claims stand allowed, the application does not become abandoned by the dismissal, but is returned to the examiner for action on the allowed claims. See MPEP § 1215.04.

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By hand: Customer Service Window
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401 Dulany Street
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

A handwritten signature in black ink, appearing to read "Derek L. Woods", is written over the printed name.

Derek L. Woods
Attorney
Office of Petitions